LOS ANGELES COUNTY COUNSEL WORKERS' COMPENSATION

Labor Code 132a - Don't let this happen to you...

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Labor Code § 132a - Don't let this happen to you . . .

I. Labor Code § 132a

An employer may not discharge or discriminate against an industrially injured employee because he or she

- 1. Filed or made known an intention to file an application for adjudication by the Workers' Compensation Appeals Board; (Labor Code § 132a(1))
- 2. Received a rating, award, or settlement of a claim; (Labor Cocle § 132a(1)) or
- 3. Testified or made known an intention to testify in another employee's case. (Labor Code $\S 132a(3)$)

Insurance carriers are also prohibited from inducing an employer to discharge or discriminate against an employee for the same reasons. (Labor Code §§ 132a(2), (4))

Violation of Labor Code § 132a is a misdemeanor. A prevailing employee may be awarded **reinstatement**, back pay, and half of the workers' compensation benefits granted up to \$10,000, and costs and expenses up to \$250.

The statute of limitations is one year after the date the violation occurred. If the employer engages in a course of discriminatory conduct, proceedings commenced within 1 year of the last act of discrimination are timely. *County of Los Angeles (Fire) v. W.C.A.B.* (Dulan) 65 C.C.C. 166.

The employee may have a legitimate discrimination claim against the County if he or she files or plans to file a workers' compensation claim and he or she:

- Is terminated from the job is fired or laid off without a legitimate business reason;
- **Is harassed** employee is "written up" or embarrassed in front of other employees, or work life is made more difficult without a legitimate business reason;
- **Is threatened** employer threatens to terminate or make work life difficult if workers' compensation case is pursued;
- **Is subjected** to an unreasonable change at work e.g. one's shift is changed to a less desirable one, or employee is given extra work to do without a reasonable business necessity;
- **Is demoted or given a cut in pay** e.g. seniority is taken away or pay is decreased without a reasonable business necessity for doing so

- **Is subjected to any other type of discriminatory action** - this may apply if other employees in similar circumstances are not subjected to these actions or if the employer fails to offer reasonable accommodations for the disability.

II. Which 132a Claims Are Likely to Succeed?

III. When Does the Employer Not Violate Labor Code § 132a?

IV. Employee's Burden of Proof

- a. Employee must prove detrimental act;
- b. That the act is related to the work-related injury;
- c. After Lauher, employee must establish that he or she was singled out for disadvantageous treatment.

V. Employer's Burden of Proof

- a. If employee meets burden of proof, then employer must prove affirmative defense that the detrimental act was required for legitimate business reason.
- b. Important considerations
 - i. Can employee perform the job?
 - ii. Does safety for the injured employee require the employer's conduct?

VI. Department of Rehabilitation v. W.C.A.B. (Lauher)

- a. Employee must show that he or she has a legal right to receive or retain a deprived benefit or status;
- b. Must show that employer has a corresponding legal duty to provide the benefits or status or refrain from taking it away.

VII. Obvious Violations of Labor Code §132a

- Employer required that the worker resign as a condition of furnishing vocational rehabilitation. *Robbins v Pacific Bell* (OAK 111083, Nov. 25, 1985) 14 CWCR 45 (WCAB panel).
- Worker told not to come back to work if he saw a doctor for his injury. *Mondorf v TRF Delivery Serv.* (84 POM 96549, Aug. 12, 1986) 14 CWCR 280 (WCAB panel).
- Worker was refused a transfer to a new facility during a plant relocation because the worker was considered accident-prone as a result of his industrial injuries. *Sanchez v Dura-Vent Corp.* (SJ 95346, Mar. 31, 1986) 14 CWCR 137 (WCAB panel).
- Discharged deputy sheriff who was injured during academy training was treated differently from other employees. *Garcia v County of Imperial* (83 SD 76885, Sept. 6, 1985) 13 CWCR 244 (WCAB panel).
- Reduced workers' seniority for industrially related absences. *Albertson's, Inc. v WCAB (Gordon)* (1994) 59 CCC 430 (writ denied).

- Fired an injured employee on the day of industrially related back surgery (no need to show additional economic detriment). *A&M Towing v WCAB (Thornton)* (2003) 68 CCC 456 (writ denied).
- Treated industrially injured worker with hostility when he returned to light duty, precluded him from company meetings, believed he was faking his injury, and terminated him based on a complaint for which he was reprimanded only after filing his workers' compensation claim. *Crown Appliance v WCAB (Wong)* (2004) 115 CA4th 620, 9 CR3d 415, 69 CCC 55.

VIII. No Violation of Labor Code §132a Following Lauher

- Robbins v WCAB (John Muir Med. Ctr.) (2005) 70 CCC 1738 (writ denied; employee's prolonged absence from work due to industrial injury did not preclude employer from permanently filling employee's managerial position when evidence showed employer's interim solutions constituted undue hardship to employer);
- Micevski v WCAB (2005) 70 CCC 252 (writ denied; no evider ce showed that employee had right to job status that employer changed, or that change in job status caused the termination, or that employee was singled out because of his industrial injury);
- Robinson v WCAB (2005) 70 CCC 262 (writ denied; termination due to failure to comply with medical certification policy not discriminatory when evidence established policy applied equally to all employees);
- Gallant v WCAB (2005) 70 CCC 485 (writ denied; absence of evidence to establish that legal right to modified duty not provided in a timely fashion).
- Roadway Express, Inc. v WCAB (McCormick) (2006) 71 CCC 864 (writ denied; employer denied applicant truck driver's request to return to work when similar physical limitations had previously been accommodated in other cases and when applicant's rights under Lab C §132a were independent of collective bargaining agreement and thus not preempted by Labor Management Relations Act (LMRA));
- San Diego Transit v WCAB (Calloway) (2006) 71 CCC 445 (writ denied; employer refused to allow bus driver to return to work despite her release by her treating physician when it had allowed drivers to return on earlier occasions with medical releases and when it had failed to discuss concerns regarding employee's brace with employee or her physician);
- Chevron Prods. Co. v WCAB (Pernell) (2004) 70 CCC 228 (writ denied; applicant's requests for reinstatement not granted when treating physician's report was unclear about restrictions, but indicated applicant was able to perform usual work and defendant failed to obtain clarifying evidence);
- A. Teichert & Sons, Inc. v WCAB (North) (2005) 70 CCC 710 (writ denied; termination for violation of safety policy discriminatory when policy imposed stronger discipline if violation resulted in injury);

- Sutter Home Winery v WCAB (Walker) (1997) 62 CCC 234 (writ denied; failure to allow applicant to continue working and failure to reinstate);
- Coca Cola Bottling Co. v WCAB (Shah) (1997) 62 CCC 346 (writ denied; failure to allow applicant to return to work without examination by defendant's physician);
- City of Monterey v WCAB (Rawlinson) (1997) 62 CCC 501 (writ denied; applicant terminated when applicant's testimony and treating physician indicated ability to return to work and no business necessity established);
- Los Angeles County Metro. Transp. Auth. v WCAB (Portillo) (1997) 62 CCC 695 (writ denied; failure to allow applicant to return to work or to reinstate applicant absent evidence of inability to perform work on a permanent basis);
- Atlas Motors Ltd. v WCAB (Zeilinger) (1997) 62 CCC 952 (writ denied; failure to allow applicant to return to work and replacement of applicant before medical determination of applicant's abilities); and
- American Modular Sys., Inc. v WCAB (Perez) (2001) 66 CCC 729 (writ denied; no showing that applicant could not perform job he was doing when terminated; applicant's failure to respond to offer of alternative work relevant only to right to vocational rehabilitation services).

IX. Other Finding No Violation of Labor Code §132a

- Atkins v WCAB (2003) 68 CCC 1690 (writ denied; no evidence of existence or availability of modified or alternative work; applicant did not impeach testimony of employer's witness that no such position existed and applicant was offered vocational rehabilitation);
- Romero v WCAB (2003) 68 CCC 1250 (writ denied; applicants name placed on reemployment list after exhaustion of leave benefits consistent with Education Code and collective bargaining agreement);
- Keener v WCAB (2003) 68 CCC 957 (writ denied; after fitness evaluations indicated she could return to work, applicant failed to do so and failed to provide evidence to dispute evaluations);
- Badache v WCAB (2003) 68 CCC 932 (writ denied; cab driver taken out of service after automobile accident when applicant refused to complete mandatory accident report and DMV suspended his operator's license for excess points on license);
- Grattidge v WCAB (2000) 65 CCC 191 (writ denied; defendant established that all warehousemen had to perform duties that applicant could not and that no modified work was available);

- Riddle v WCAB (City of Palmdale) (1997) 62 CCC 1321 (writ denied; applicant's termination nondiscriminatory when there was reasonable belief in inability to perform work);
- Prince v WCAB (Gate City Beverage Inc.) (1997) 62 CCC 1318 (writ denied; applicant's termination justified when consistent with absence policy and applicant appeared permanently precluded from performing duties and no other work was available);
- Flippen v WCAB (Long Beach Unified Sch. Dist.) (1997) 62 CCC 974 (writ denied; delay in returning applicant to work based on business necessity);
- Bloom v WCAB (Dolan) (1997) 62 CCC 680 (writ denied; applicant's termination was business necessity due to necessity for replacement);
- McCarthy v WCAB (Patrick Media Group) (1997) 62 CCC 534 (writ denied; applicant's termination was nondiscriminatory because of applicant's failure to take action or communicate with defendant);
- Bennett v WCAB (The Von's Co.) (1997) 62 CCC 171 (writ denied; refusal to reinstate applicant, although vocational rehabilitation was provided and applicant was rehired in different position and reasonable steps were taken to avoid reinjury); and
- Ponder v WCAB (Kern Rock Co.) (1997) 62 CCC 95 (writ denied; termination due to nonindustrial injury and documentation proved it).

X. Conclusion

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TOC: Deering's California Code Annotated > / . . . / > Chapter 5. Division of Workers' Compensation > § 132a. Policy opposed

to discrimination against injured workers; Misdemeanor offenses

Citation: cal lab. code 132a

Cal Lab Code § 132a

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*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION **ENACTED** ***

*** THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6, APPROVED 2/16/08 ***

LABOR CODE

Division 1. Department of Industrial Relations Chapter 5. Division of Workers' Compensation

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Lab Code § 132a (2008)

§ 132a. Policy opposed to discrimination against injured workers; Misdemeanor offenses

Practitioner's Toolbox

2 **-**

History

🏂 Votes

Notes of Decisions

Resources & Practice Tools

Collateral References

- > Procedure for destruction of files: 8 Cal Code Reg § 10758.
- > Hanna, Cal Emp Inj & Workers' Comp. 2d (Rev) §§ 10.11 [1]- [4], [1.07 [7], 21.03 [2] [d], 35.103 [2], 35.104 [2].
- > Cal. Legal Forms, (Matthew Bender) § 85.24[2][b].

... More...

- Law Review Articles
- Suggested Forms

It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

- (1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars (\$10,000), together with costs and expenses not in excess of two hundred fifty dollars (\$250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.
- (2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, cr settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).
- (3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.
- (4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another

employee's case before the appeals board, is guilty of a misdemeanor.

Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.

THISTORY:

Added Stats 1972 ch 874 § 1. Amended Stats 1978 ch 1250 § 3; Stats 1982 ch 922 § 1; Stats 1989 ch 892 § 20; Stats 1990 ch 1550 § 13 (AB 2910).

* Notes:

- 1. Former Sections
- 2. Amendments
- 3. Historical Derivation
- ***** 1.

Former Sections:

Former § 132a, similar to the present section, was added by Stats 1941 ch 401 § 1, amended by Stats 1965 ch 1513 § 36, operative January 15, 1966, and repealed by Stats 1972 ch 874 § 2.

- 2. Amendments:
 - 1978 Amendment
 - **1982** Amendment
 - ★ 1989 Amendment
 - ★ 1990 Amendment

₹ 1978 Amendment:

(1) Designated the former second and third paragraphs to be subds (1) and (2); (2) amended subd (1) by (a) deleting "or, because the employee has received a rating award or settlement, or, because the employee testified or made known his intentions to testify in any matter relating to the appeals board," after "or settlement" the first time it appears; and (b) adding the second sentence; (3) added subds (3) and (4); and (4) amended the second paragraph by adding (a) ", or for reinstatement and reimbursement for lost wages and work benefits," after "4553"; and (b) adding ", except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge" at the end of the second sentence; and (c) the third sentence.

3 1982 Amendment:

In addition to making technical changes, (1) amended the first sentence of subd (1) by (a) adding "for adjudication" after "file an application"; and (b) substituting 'and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars (\$10,000), together with costs and expenses not in excess of two hundred fifty dollars (\$250)" for "subject to the provisions of Section 3553" at the end of the sentence; (2) substituted "increased compensation and costs provided by paragraph (1)" for "provisions of Section 4553" at the end of subd (a)(2); and (3) deleted "under this section" after "Proceedings" at the beginning of the last paragraph.

₹ 1989 Amendment:

(1) Amended the first sentence of subd (1) by (a) adding "a claim for compensation with his or her employer or"; and (b) deleting "with the appeals board" after "adjudication"; (2) amended subd (2) by substituting (a) "insurer that" for "insurance carrier who" after "Any"; (b) "he or she" for "the latter"; (c) "a claim for compensation with his or her employer or an application for adjudication" for "an application with the appeals board"; and (d) "in" for "by" after "prov ded"; (3) substituted "a workers' compensation judge" for "the appeals board" in subd (3); (4) a mended subd (4) by (a) substituting "insurer that" for "insurance carrier who" after "Any"; (b) acding "employer" after "insured"; (c) substituting "intention" for "intentions"; and (d) substituting "a worker's compensation judge" for "the appeals board"; and (5) deleted "the" after "all" in the second sentence of the last paragraph.

₹ 1990 Amendment:

Substituted "the appeals board" for "a workers' compensation judge" in subds (3) and (4).

₹ 3.

Historical Derivation:

Former § 132a, as added Stats 1941 ch 401 § 1 p 1686, amended Stats 1965 ch 1513 § 36.

Tollateral References:

- 1 Witkin Summary (10th ed) Contracts § 888.
- 2 Witkin Summary (10th ed) Workers' Compensation §§ 17, 18, 19, 20, 21, 22, 107, 276.
- 3 Witkin Summary (10th ed) Agency and Employment § 350.
- 8 Witkin Summary (10th ed) Constitutional Law § 936.

Cal Jur 3d (Rev) Employer and Employee § 74.

Procedure for destruction of files: 8 Cal Code Reg § 10758.

Meeting statutory deadlines: Workers' compensation. CEB Action Guide, Winter 1993.

Arbitration: When is it a good alternative to litigation for wrongful discharge disputes? CEB Bus L Practitioner Vol.7 No.1 p 1.

Hanna, Cal Emp Inj & Workers' Comp. 2d (Rev) §§ 10.11 [1]- [4], 21.07 [7], 21.03 [2] [d], 35.103 [2], 35.104 [2].

Cal. Legal Forms, (Matthew Bender) § 85.24[2][b].

Herlick, Cal Workers' Comp Handbook §§ 1.2, 9.12.

Forms:

Suggested forms are set out below, following notes of decisions.

F Law Review Articles:

Review of 1989 Legislation. 21 Pacific LJ 571.

Outside the "compensation bargain:" protecting the rights of workers disabled on the job to file

suits for disability discrimination. 37 Santa Clara LR 587.

"Disabling" workers' compensation exclusivity: enabling California workers to file work related disability discrimination claims in state court. 38 Santa Clara LR 893.

Employment Discrimination After the 1993 Amendments to FEHA: A Change in the Once Settled Bargain? 32 USF LR 433.

Annotations:

Recovery for discharge from employment in retaliation for filing workers' compensation claim. 32 ALR4th 1221.

Discharge of employee for complaining about wages, hours, or working conditions as unfair labor practice. 22 ALR Fed 113.

Hierarchy Notes:

Lab Code Note

Div. 1 Note

Div. 1, Ch. 5 Note

Notes of Decisions:

- 🏂 1. In General
- 2. Construction and Application
- 3. Practice and Procedure

3 1. In General

An employer may not defend a discriminatory employment practice proscribed by <u>Lab. Code, § 132a</u>, on the basis of the provisions of a collective bargaining agreement. A union may no more bargain away its members' statutory rights against discrimination under the workers' compensation laws than it may bargain away its members' statutory rights against, for example, sexual or racial discrimination. <u>Judson Steel Corp. v. Workers' Comp. Appeals Bd. (1978)</u> 22 Cal 3d 658, 150 Cal Rptr 250, 586 P2d 564, 1978 Cal LEXIS 309.

The scope of Lab. Code, § 132a, which prohibits discrimination in any manner against a worker who is injured in the course and scope of his or her employment, cannot be limited artificially to include only the motives and actions of the individual person who was the employer's ultimate agent in the commission of the allegedly discriminatory action, and only at the time he acted. Smith v. Workers' Comp. Appeals Bd. (1984, Cal App 1st Dist) 152 Cal App 3d 1104, 199 Cal Rptr 881, 1984 Cal App LEXIS 1738.

In an action for wrongful discharge in violation of Lab. Code, § 132a, which, at the time of the employee's discharge made it a misdemeanor for an employer to discharge an employee for filing a workers' compensation claim, plaintiff's remedies were not limited to those set forth in § 132a as amended in 1978 and 1982, thereby requiring reversal as to the damages awarded for emotional distress and as punitive damages. A prior appeal, which was the law of the case, held that damages for discriminatory discharge were not provided under the workers' compensation statutes; thus, plaintiff's remedies were not limited by § 132a as in effect in 1974. The 1978 amendment providing new remedies to a discharged employee, and the 1982 amendment, setting a limit on the amount of increased compensation to which the employee would be entitled, were clearly substantive in nature and could not be applied retrospectively, absent a clear showing of legislative intent for such application. Meyer v. Byron Jackson, Inc. (1984, Cal App 2d Dist) 161 Cal App 3d 402, 207 Cal Rptr

663, 1984 Cal App LEXIS 2669.

Final responsibility for the interpretation of <u>Lab. Code</u>, § 132a (policy opposing discrimination against injured employees), rests with the courts. <u>St. Cyr v. Workers' Comp. Appeals Bd. (1987, Cal App 1st Dist)</u> 196 Cal App 3d 468, 243 Cal Rptr 1, 1987 Cal App LEXIS 2342.

Lab. Code, § 132a, is designed to prevent retaliatory discrimination by employers against their employees who seek workers' compensation remedies based on work-related injuries. The section expresses a policy opposing all discrimination against workers based solely on their having been injured in the course of employment. Raven v. Oakland Unified School Dist. (1989, Cal App 1st Dist) 213 Cal App 3d 1347, 262 Cal Rptr 354, 1989 Cal App LEXIS 947.

In an action for age discrimination in employment, handicap discrimination, and retaliation (Gov. Code, §§ 12940, subds. (a) & (f), 12941, subd. (a)), arising from a movie studio's alleged discrimination against a lighting technician with a work-related injury, the handicap discrimination claim was barred by the exclusive remedy provisions of the Workers' Compensation Act, and thus the studio was entitled to summary adjudication of that claim. The claim fell within Lab. Code, § 132a, providing for increased workers' compensation benefits, reinstatement, and payment of lost wages for an employee discharged for seeking or receiving workers' compensation benefits. Although the employee had been a "daily hire" who was called to work on a daily or weekly basis, he was nevertheless covered by Lab. Code, § 132a, since he had been employed by the studio at all relevant times preceding the alleged discriminatory acts, and the studio had paid him workers' compensation benefits for his injuries. Denney v. Universal City Studios, Inc. (1992, Cal App 2d Dist) 10 Cal App 4th 1226, 13 Cal Rptr 2d 170, 1992 Cal App LEXIS 1292.

In an action arising from an employer's termination of an employee who suffered from a work-related heart condition, the trial court properly granted summary judgment in favor of defendant employer. Even though the employee stated causes of action for discrimination based on a physical handicap in violation of the Fair Employment and Housing Act and for common law wrongful termination in violation of fundamental public policy, Lab. Code, § 132a, provides workers' compensation remedies for any discrimination against an employee based on a work-related injury. Although some types of employer discrimination and retaliation that give rise to statutory or common law remedies do not fall within the compensation bargain, and therefore are not barred by the exclusivity of workers' compensation remedies, by enacting Lab. Code, § 132a, the Legislature has demonstrated an intent to place specifically the risk of discrimination based on a work-related injury within the bargain. Thus, the employee was limited to the remedies available under the workers' compensation law. Angell v. Peterson Tractor, Inc. (1994, Cal App 3d Dist) 21 Cal App 4th 981, 26 Cal Rptr 2d 541, 1994 Cal App LEXIS 14, review denied (1994, Cal) 1994 Cal LEXIS 2460, time for gr or den review extended.

Lab C § 132a does not provide an exclusive remedy and does not preclude an employee from pursuing California Fair Employment and Housing Act (FEHA) and common law wrongful discharge remedies. Nevertheless, not every instance of disability discrimination in violation of Lab C § 132a gives rise to a valid FEHA claim. The term "disability" has a specific meaning in the context of the workers' compensation law that it has in no other context. On the other hand, the FEHA includes detailed definitions of "physical disability" and "mental disability" that make no reference to the workers' compensation law. (Gov C § 12926, subds. (i), (k)). Because the standards for establishing disability discrimination may well be different under the FEHA than under Lab C § 132a, a decision in an employee's favor on a Lab C § 132a petition would not establish a FEHA violation. Moreover, to the extent Lab C § 132a and the FEHA overlap, equitable principles preclude double recovery for employees. For example, employees who settle their claims for lost wages and work benefits as part of a Lab C § 132a proceeding could not recover these damages as part of a subsequent FEHA proceeding. City of Moorpark v. Superior Court (1998) 18 Cal 4th 1143, 77 Cal Rptr 2d 445, 959 P2d 752, 1998 Cal LEXIS 5146.

In an action for wrongful discharge by a terminated employee against a c ty and two supervisors, the trial court properly overruled the defendants' demurrers, in that disability discrimination can form the basis of a common law wrongful discharge claim. A four-part test determines whether a particular policy can support a common law wrongful discharge claim. The policy must be: (1) delineated in either constitutional or statutory provisions; (2) "public" in the sense that it inures to the benefit of the public rather than serving merely the interests of the individual; (3) well established at the time of the discharge; and (4) substantial and fundamental. First, the California Fair Employment and

Housing Act (FEHA) clearly delineates a policy against disability discrimination in employment, at least in the case of employers of five or more employees. (Gov C §§ 12940, subd. (a), 12926, subd. (d)). Moreover, the FEHA is just one expression of a much broader policy against disability discrimination that appears in a variety of legislative enactments. Second, the policy incres to the benefit of the public because (1) any member of the public may develop a disability and become the victim of disability discrimination, (2) the public at large benefits from the productivity of disabled employees, and (3) any type of invidious discrimination foments strife and unrest. Third, the policy against disability discrimination has been included in the FEHA since July 1, 1974, and therefore is well established. Finally, the policy against disability discrimination is substantial and fundamental. If disabled employees can prove that they can perform the job duties as effectively as nondisabled employees, taking into consideration the possibility, if any, that their condition will change, as well as the employer's short and long-term needs, then discrimination based on disability, like sex and age discrimination, violates a substantial and fundamental public policy and can form the basis of a common law wrongful discharge claim. Nevertheless, this remedy must be carefully tethered to fundamental policies that are delineated in the FEHA on which it is based. Accordingly, just as disability discrimination in violation of Lab C § 132a does not alone establish a valid FEHA claim, it also does not alone establish a valid common law wrongful discharge claim. Furthermore, to the extent Lab C § 132a, the FEHA, and the common law remedies overlap, equitable principles preclude multiple recoveries for the same injury. City of Moorpark v. Superior Court (1998) 18 Cal 4th 1143, 77 Cal Rptr 2d 445, 959 P2d 752, 1998 Cal LEXIS 5146.

Employee's claim under Cal. Lab. Code § 132(a) alleging that defendants had discriminated against her by terminating her group medical benefits after a six-month leave of absence was preempted by the Employment Retirement Income Security Act, 29 USCS § 1144; the health plan fell within the scope of ERISA, and the enforcement of § 132 would relate to the plan and reach the terms and conditions of the plan and did not fall under one of the exemptions to preemption. Scotti v. Los Robles Reg'l Ctr. (2000, CD Cal) 117 F Supp 2d 982, 2000 US Dist LEXIS 19585.

Employer does not discriminate against an injured employee within the meaning of <u>Cal. Lab. § 132a</u> if it requires the employee to use sick and vacation leave when away from the workplace seeking treatment for the employee's permanent injury. <u>Department of Rehabilitation v. Workers' Comp.</u> Appeals Bd. (2003) 30 Cal 4th 1281, 135 Cal Rptr 2d 665, 70 P3d 1076, 2003 Cal LEXIS 4198.

Based on the substantial evidence that the employer (1) treated the employee poorly after the injury, (2) believed the employee was faking the disability, and (3) wished to dismiss the employee since the employee returned to light duty work, the workers' compensation board acted within its authority in finding that the employer fired the employee in retaliation for filing a workers' compensation claim in violation of Lab C § 132a. Crown Appliance v. Workers' Comp. Appeals Bd. (2004, Cal App 5th Dist) 115 Cal App 4th 620, 9 Cal Rptr 3d 415, 2004 Cal App LEXIS 148.

₹ 2. Construction and Application

By amending Lab. Code, § 132a, to include a sentence providing that there should not be discrimination against workers who are injured in the course and scope of their employment, the Legislature intended to change the prior law which singled out certain discriminatory acts for condemnation and to declare a general policy in favor of preventing all discrimination against injured employees. Consequently, those situations in which an employee is penalized solely because he was injured on the job or had to lose time from work solely because of a work injury (rather than for example, situations in which the employer reasonably believed that the employee's injury prevents him from being able to do his job in an appropriate manner) are within the scope of the statute. The statute does not compel an employer to ignore the realities of doing business by reemploying unqualified employees or employees for whom positions are no longer available. (Disapproving Randolph v City of Los Angeles (1977) 67 Cal App 3d 201, 136 Cal Rptr 543, 1977 Cal App LEXIS 1218 to the extent it held that only those activities specifically enumerated in Lab. Code, § 132a, provided grounds for a claim of discrimination.) Judson Steel Corp. v. Workers' Comp. Appeals Bd. (1978) 22 Cal 3d 658, 150 Cal Rptr 250, 586 P2d 564, 1978 Cal LEXIS 309.

In a workers' compensation proceeding, there was substantial evidence to support the finding of the Workers' Compensation Appeals Board that the employee's seniority rights, and ultimately his employment, were terminated in violation of <u>Lab. Code, § 132a</u>, providing that there shall be no

discrimination against workers who are injured in the course and scope of their employment, and making the penalty provision of Lab. Code, § 4553, available for such discrimination. The record indicated the employee, who was unable to work for a year due to an industrial injury, was one of several employees laid off on the basis of seniority due to lack of work. The union contract permitted termination of seniority status for nonperformance of work for 12 consecutive months subject to an extension of that period by mutual agreement between the employer and the union. A union representative offered uncontroverted testimony that it was standard procedure between the employer and the union to extend time absent from work without loss of seniority in cases of compensable illness or injury, and that in the present case, the employer had not notified the union of the employee's absence and had not asked for an extension for the employee. Judson Steel Corp. v. Workers' Comp. Appeals Bd. (1978) 22 Cal 3d 658, 150 Cal Rptr 250, 585 P2d 564, 1978 Cal LEXIS 309.

The liberal construction of the workers' compensation laws as mandated by Lab C, § 3202, apply to Lab C, § 132a, which establishes a remedy for certain misconduct of an employer by way of an award of increased compensation. Western Elec. Co. v. Workers' Compensation Appeals Bd. (Smith) (1979, Cal App 2d Dist) 99 Cal App 3d 629, 160 Cal Rptr 436, 1979 Cal App LEXIS 2361.

In a workers' compensation proceeding in which a deputy sheriff claimed industrial injuries incurred in the course of his employment, the workers' compensation judge properly found the deputy had been discriminated against within the meaning of Lab. Code, § 132a, by a reduction in his status following his injuries, and that he was therefore entitled to increased compensation pursuant to the statute. Though there was no evidence the county violated any specific prohibition of § 132a, and it treated all disabilities--industrial and nonindustrial--alike, its policy of reassigning industrially injured employees was contrary to the policy expressed in the statute's preamble "that there should not be discrimination against workers who are injured in the course and scope of their employment." County of Santa Barbara v. Workers' Compensation Appeals Board (1980, Cal App 2d Dist) 109 Cal App 3d 211, 167 Cal Rptr 65, 1980 Cal App LEXIS 2154.

An award against an employer for a 50 percent increase in an employee's workers' compensation benefits pursuant to the statute providing for such an award in the event of specified misconduct by an employer (Lab. Code, § 132a), is not tantamount to finding the employer guilty of a misdemeanor under the statute. Burton v. Workers' Comp. Appeals Bd. (1980, Cal App 2d Dist) 112 Cal App 3d 85, 169 Cal Rptr 72, 1980 Cal App LEXIS 2437.

The Workers' Compensation Appeals Board erred in affirming a decision of a workers' compensation judge that reflected a miscalculation in the amount of a 10 percent penalty assessed against an employer under Lab. Code, § 5814, on the employer's failure to promptly pay in full an award assessed in favor of an injured employee for a 50 percent increase in his compensation benefits pursuant to Lab. Code, § 132a and 4553, as the result of the employer's discrimination against him in violation of Lab. Code, § 132a. The employer had paid the 50 percent increase under the § 132a award as to all the worker's compensation benefits except with regard to a temporary disability indemnity and under the decision of the judge the 10 percent penalty uncer Lab. Code, § 5814, was erroneously applied only to a 50 percent increase in the disability indemn ty instead of being applied, as it should have been, to a 50 percent increase in all the worker's compensation benefits. The award of increased benefits was itself a separate class of benefits within the rule that a Lab. Code, § 5814, penalty should be computed by assessing 10 percent of the entire amount ultimately awarded for the particular class of benefits that has been unreasonably delayed or withheld. Burton v. Workers' Comp. Appeals Bd. (1980, Cal App 2d Dist) 112 Cal App 3d 85, 169 Cal Rptr 72, 1980 Cal App LEXIS 2437.

In a workers' compensation proceeding arising out of a claim asserted by applicant for injuries sustained while working for his former employer, a city, and in which the city had later advised applicant's present employer, during a telephone conversation, to discharge him, the Workers' Compensation Appeals Board (WCAB) erred in awarding applicant a penalty for serious and wilful misconduct (Lab. Code, § 4553) based upon its finding that the city violated Lab. Code, § 132a (which prohibits employers from discharging or otherwise discriminating against any employee because the employee has filed an application for benefits with the WCAB). Section 132a was not applicable, and thus the penalty assessed against the city was in excess of the WCAB's jurisdiction, since the city was not applicant's employer at the time of the discriminatory act. Section 132a repeatedly and consistently refers to the "employer" and the "employee," and clearly contemplates an employer-employee relationship at the time of the discharge, threat of discharge or other

discriminatory act. Thus, although such conduct was otherwise discriminatory within the meaning of the statute, even though applicant suffered no adverse consequences, it was necessary to annul the decision of the <u>City of Anaheim v. Workers' Comp. Appeals Bd. (1981, Cal App 4th Dist) 124 Cal App 3d 609, 177 Cal Rptr 441, 1981 Cal App LEXIS 2248.</u>

A tire and rubber company engaged in a discriminatory act within the meaning of Lab. Code, § 132a, prohibiting discrimination against workers who are injured in the course and scope of their employment, when it refused to rehire an employee who was laid off when the plant he was working at was closed, after initially telling him he would be reemployed, on the grounds of his having filed an industrial injury claim against the company and his union activities. The company failed to show that the worker was unqualified or that the position was no longer available. Morehouse v. Workers' Comp. Appeals Bd. (1984, Cal App 2d Dist) 154 Cal App 3d 323, 201 Cal Rptr 154, 1984 Cal App LEXIS 1889.

A checker stock clerk for a tire and rubber company, who was laid off when his plant was closed, was an employee of the company within the meaning of Lab. Code, § 132a, prohibiting discrimination against workers who are injured in the course and scope of their employment, when the company refused to rehire him for a position at its warehouse on the grounds of his having filed an industrial injury claim against the company and his union activities. The company had initially informed the worker that he would be reemployed. Such discriminatory act occurred in the process of reemploying someone who had worked for the company for 33 years, who was on laid off status, was subject to recall, was receiving supplemental unemployment benefits from the company, who remained in contact with them regarding reemployment, was not employed elsewhere, and was qualified for the open position. Morehouse v. Workers' Comp. Appeals Bd. (1984, Cal App 2d Dist) 154 Cal App 3d 323, 201 Cal Rptr 154, 1984 Cal App LEXIS 1889.

The rule that workers' compensation statutes must be liberally construed in favor of the employee applies to Lab. Code, § 132a (policy opposing discrimination against injured employees), even assuming that that section envisages imposition of a penalty. St. Cyr v. Workers' Comp. Appeals Bd. (1987, Cal App 1st Dist) 196 Cal App 3d 468, 243 Cal Rptr 1, 1987 Cal App LEXIS 2342.

The Workers' Compensation Appeals Board erred in interpreting Lab. Code, § 132a (policy opposing discrimination against injured employees), to bar a claim as untimely filed, where the injured worker filed her petition within one year of her date of termination but more than one year from receiving notice of termination. Under a proper interpretation of the statute, the claim was timely filed, and that interpretation effectuates the policy opposing all discrimination against workers based solely on their having been injured in the course of employment. St. Cyr v. Workers' Comp. Appeals Bd. (1987, Cal App 1st Dist) 196 Cal App 3d 468, 243 Cal Rptr 1, 1987 Cal App LEXIS 2342.

The Workers' Compensation Appeals Board properly found that a public employer's failure to award a safety incentive bonus to a worker due to time lost on account of his work-related injury was not illegal discrimination in violation of Lab. Code, § 132a, prohibiting discrimination against workers injured in the course of their employment. The safety incentive program was adopted pursuant to Gov. Code, § 19994.20 [repealed 2003], deals only with state employees and their collective bargaining agreements and is therefore the more specific statute, and prevails in any conflict with Lab. Code, § 132a. Stemler v. Workers' Comp. Appeals Bd. (1988, Cal App 3d Dist) 204 Cal App 3d 577, 251 Cal Rptr 364, 1988 Cal App LEXIS 862.

A workers' compensation judge erred in concluding that an employer's refusal to rehire an injured worker when two positions of the type the worker had held at the time of being injured became available did not violate Lab. Code, § 132a (discrimination against injured workers), in that there was no longer an employment relationship and the employer thus had no obligation to refrain from discriminating against the worker based on his injury. Since the worker's termination itself was discriminatory, it could not provide a basis for immunizing the employer's later discriminatory conduct. Barns v. Workers' Comp. Appeals Bd. (1989, Cal App 1st Dist) 216 Cal App 3d 524, 266 Cal Rptr 503, 1989 Cal App LEXIS 1355.

The section of the Labor Code that bars discrimination against employees for exercising their workers' compensation rights (Lab. Code, \S 132a), together with certain sections of the workers' compensation act (Lab. Code, \S 3200 et seq.), are the exclusive remedy for a worker discharged for exercising such rights, and the Workers' Compensation Appeals Board has the authority to interpret Lab. Code, \S

132a, broadly to prohibit discrimination in any manner against an industrially injured employee. Fortner v. Safeway Stores, Inc. (1991, Cal App 6th Dist) 229 Cal App 3d 542, 280 Cal Rptr 409, 1991 Cal App LEXIS 374, review denied (1991, Cal) 1991 Cal LEXIS 3215.

The scope of Lab. Code, § 132a, which bars discrimination against employees for exercising their workers' compensation rights, is not restricted to injuries arising out of employment with the employer who discriminated; rather it contemplates an employer-employee relationship at the time of the discharge, threatened discharge or other discriminatory act. Thus, a grocery clerk who was twice suspended for wearing open-toed sandals to work, which she claimed were necessary to alleviate her "painful feet" condition, and who brought an action against the grocery store and her manager claiming that the suspensions were discriminatory and retaliatory, was limited to § 132a as her exclusive remedy, even though, as she contended, her condition might have arisen while she was a clerk for defendant store's predecessor. Fortner v. Safeway Stores, Inc. (1991, Cal App 6th Dist) 229 Cal App 3d 542, 280 Cal Rptr 409, 1991 Cal App LEXIS 374, review denied (1991, Cal) 1991 Cal LEXIS 3215.

In an action for handicap discrimination under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) against her former employer, in which plaintiff alleged constructive termination based on her inability to perform her old job because of work injury, the trial court properly granted the employee's motion for summary adjudication as to her claim for breach cf contract. Since plaintiff admitted that the damages suffered were derived from discrimination based on an industrial injury and that she was disabled throughout the entire period of discrimination, the essence of the wrong was a personal injury sustained at work and lost wages because of the employer's discrimination against her due to her industrial injury, which matters are covered by the Workers' Compensation Act (Lab. Code, § 132a). Plaintiff could not avoid the exclusive remedy provision (Lab. Code, § 3600) by labeling the cause of action as one for breach of contract. Usher v. American Airlines (1993, Cal App 1st Dist) 20 Cal App 4th 1520, 25 Cal Rptr 2d 335, 1993 Cal App LEXIS 1251, review denied (1994, Cal) 1994 Cal LEXIS 1611, time for gr of den review extended.

Although Lab. Code, § 132a, on its face, only provides a remedy against employers who retaliate for a worker's use of the workers' compensation system, the broad policy language of § 132a provides the increased workers' compensation remedies of that section for any discrimination against an employee based on a work-related injury. Angell v. Peterson Tractor, Inc. (1994, Cal App 3d Dist) 21 Cal App 4th 981, 26 Cal Rptr 2d 541, 1994 Cal App LEXIS 14, review denied (1994, Cal) 1994 Cal LEXIS 2460, time for gr or den review extended.

In an action by a school employee who sustained a work-related injury resulting in temporary total disability, alleging physical disability discrimination in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), for the school district's delay ir reinstating her, the trial court properly sustained the district's demurrer and dismissed the action. Lab. Code, § 132a, prescribing increased workers' compensation remedies for any discrimination against an employee based on a work-related injury, is the only state remedy for such discrimination, to the exclusion of the FEHA. The element of fault in Lab. Code, § 132a, does not take work-related disability discrimination outside the scope of the compensation bargain which has a no-fault basis, and underlies the exclusive remedy provisions of the workers' compensation law (Lab. Code, §§ 3600-3602). Serious and willful misconduct is fault based but still falls within the scope of the compensation bargain. Application of workers' compensation exclusivity does not make the FEHA's proscription against disability discrimination an idle act, as it still applies to all disability discrimination that is not based on work-related injuries. Nor does the distinction between work-related disabilities and non-work-related disabilities violate equal protection. Langdridge v. Oakland Unified Sch. Dist. (1994, Cal App 1st Dist) 1994 Cal App LEXIS 1331.

In a proceeding before the Workers' Compensation Appeals Board by a former employee claiming that she was wrongfully terminated following a work-related injury in violation of Lab. Code, § 132a, the evidence did not support the board's conclusion that the company currently managing the residential care facility where the employee had worked would be responsible for compliance with any order to reinstate and pay back benefits, on the basis of its being the successor to the company that had managed the facility at the time of the alleged wrong. Under appropriate circumstances, a successor entity may be held liable for § 132a remedies; however, liability is determined on a case-by-case basis. Where the new entity is merely a disguised continuance of the old one, or where the transfer is simply a means of evading the judgment, successor liability is appropriate. However, in the present

case, although the current management company had notice of the board proceedings and actively participated in them, the record did not disclose any details regarding the circumstances of the management transfer, nor whether the management company knew of the pending claim at that time. Superior Care Facilities v. Workers' Comp. Appeals Bd. (1994, Cal App 3d Dist) 27 Cal App 4th 1015, 32 Cal Rptr 2d 918, 1994 Cal App LEXIS 863.

In a proceeding before the Workers' Compensation Appeals Board by a former employee claiming that she was wrongfully terminated following a work-related injury in violation of Lab. Code, § 132a, the board erred in concluding that the management company currently managing the residential care facility at which the employee had worked (another company, now bankrupt, had been the manager at the time of the alleged wrong) could be liable for remedies under § 132a by virtue of its relationship as an agent of the facility licensee. It is true that under the common law an injunction binds not only the defendant but also servants or agents and those in collusion with the defendant. If it could be demonstrated that the current management company was merely an extension of the licensee, an order of reinstatement would bind both. However, the record revealed little about the relationship between the licensee and the predecessor management company and even less about the relationship between the licensee and the current management company. There was no evidence that the licensee controlled the current management company's personnel decisions. Superior Care Facilities v. Workers' Comp. Appeals Bd. (1994, Cal App 3d Dist) 27 Cal App 4th 1015, 32 Cal Rptr 2d 918, 1994 Cal App LEXIS 863.

The exclusive remedies of workers compensation barred an action against the state and related defendants alleging discrimination based on physical handicap, brought by state workers who suffered injuries from exposure to a chemical while hanging traps in a pest eradication program. Although Gov. Code, § 12940, makes it unlawful for an employer to discriminate against an employee for a number of things, including physical handicap, as a general rule, an employee injured in the course of employment is limited to the remedies available under the Workers' Compensation Act. Claims of discrimination based on physical handicap fall under this limitation. Workers' compensation is based upon a quid pro quo; employees receive payment for injuries in the work place without having to prove fault, and employers receive an exemption from civil suit. Lab. Code, § 132a, provides for an increase in compensation to any employee discriminated against as a result of an injury incurred in the course and scope of employment. With the enactment of this statute, the Legislature specifically intended claims of discrimination based upon physical injury to be included within the workers' compensation scheme. Thus, Lab. Code, § 132a, is the only remedy for an employer's discriminatory actions against am employee based upon a work-related injury. Adkins v. State (1996, Cal App 2d Dist) 50 Cal App 4th 1802, 59 Cal Rptr 2d 59, 1996 Cal App LEXIS 1117, review denied (1997, Cal) 1997 Cal LEXIS 1268.

In an action by a terminated employee against a city and two supervisors, alleging causes of action for, inter alia, disability discrimination in violation of the California Fair Employment and Housing Act (FEHA; $\underline{\text{Gov C} \S 12900}$ et seq., $\underline{12965}$), the trial court properly overruled the defendants' demurrers, in that the FEHA and common law wrongful discharge remedies are available to an employee who has suffered discrimination based on a work-related disability, i.e., a disability resulting from an injury "arising out of and in the course of the employment" that gave rise to the discrimination. ($\underline{\text{Lab C} \S}$ 3600). $\underline{\text{Lab C} \S}$ 132a does not provide the exclusive remedy for this type of discrimination and FEHA and common law remedies are available. Nothing in the provisions of the FEHA suggests that FEHA only applies to physical or mental disabilities that are unrelated to work. Moreover, the FEHA declares that its "provisions ... shall be construed liberally for the accomplishment of the purposes thereof." ($\underline{\text{Gov C} \S}$ 12993, subd. (a)). A construction of $\underline{\text{Gov C} \S}$ 12940, subd. (a), that narrows the term "disability" to disabilities unrelated to work seems inconsistent with the principle of liberal construction. City of Moorpark v. Superior Court (1998) 18 Cal 4th 1143, 77 Cal Rptr 2d 445, 959 P2d 752, 1998 Cal LEXIS 5146.

In a wrongful termination action brought by an insurance claims adjuster, who sustained a work-related temporary anxiety disorder, against her former employer for breach of contract and breach of the implied covenant of good faith and fair dealing, the trial court properly entered summary judgment in favor of defendant. Plaintiff's claims were covered by Lab. Ccde, § 132a, and thus were barred by the exclusive remedy provisions of the Workers' Compensation Act (Lab. Code, § 3200 et seq.), since they sought damages arising out of alleged discrimination based on a work-related injury under the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). In any event, assuming that there was an implied contract between the parties that pla ntiff could be terminated for

good cause only, uncontraverted evidence established that defendant had good cause as a matter of law to terminate her employment. Defendant did not terminate plaintiff's employment until after her treating psychiatrist concluded that she could not return to work at defer dant's, she was retrained to work as a bookkeeper, and defendant received notice that she had secured a position in her new field. Muller v. Automobile Club of So. Cal. (1998, Cal App 4th Dist) 61 Cal App 4th 431, 71 Cal Rptr 2d 573, 1998 Cal App LEXIS 102, review denied (1998, Cal) 1998 Cal LEXIS 3574, overruled in part Colmenares v. Braemar Country Club, Inc. (2003) 29 Cal 4th 1019, 130 Cal Rptr 2d 662, 63 P3d 220, 2003 Cal LEXIS 1131, sup'd by statute as stated in questionable precedent Colmenares v. Braemar Country Club, Inc. (2001, Cal App 2d Dist) 89 Cal App 4th 778, 107 Cal Rptr 2d 719, 2001 Cal App LEXIS 417.

In making an award of backpay under Lab C § 132a to an employee wrongfully denied reinstatement because of an industrial injury, the Workers' Compensation Appeals Board was permitted, and indeed required, when the criteria of CC § 3287 were met, to add to its award interest from the date the wages and benefits would have become due had the employer not acted in violation of § 132a. Although § 132a did not itself expressly authorize the addition of prejudgment interest to an award of backpay, § 3287 required such interest on damages due on a particular date, including awards of backpay, when they were certain or capable of being made certain by calculation. Nor was § 132a backpay subject to any limitation on interest implicit in Lab C § 5800, since reimbursement for lost wages was not payment of compensation or death benefits governed by § 5800. Currie v. Workers' Comp. Appeals Bd. (2001) 24 Cal 4th 1109, 104 Cal Rptr 2d 392, 17 P3d 749, 2001 Cal LEXIS 917.

Although a former employee's cause of action for violation of Lab C § 132a was dismissed for lack of subject matter jurisdiction, an employer's alleged violation of § 132a supported a cause of action for tortious discharge in violation of the public policy embodied in § 132a. The employee's wrongful termination claim withstood a summary judgment motion because a regional manager's deposition testimony indicated that the regional manager had been aware that the employee had filed a worker's compensation claim. Miller v. Vicorp Rests., Inc. (2005, ND Cal) 2005 US Dist LEXIS 39506.

City's policy of requiring industrially injured employees to use earned vacation time rather than sick leave to attend medical appointments, while allowing workers with nonindustrial injuries or illnesses to use their sick leave for medical appointments, constituted illegal discrimination in contravention of Lab C § 132a; in accordance with the public policy of liberal extension of benefits as set forth in Lab C § 3202, the rights protected by the California Labor Code cannot be taken away by municipalities or bargained away by unions. Andersen v. Workers' Comp. Appeals Bd. (2007, 2d Dist) 2007 Cal App LEXIS 606.

Local government entities and unions may not create policies that discriminate against their industrially injured employees, even if they have plenary power to provice sick leave, because such policies contravene the mandate of <u>Lab C § 132a</u>. <u>Andersen v. Workers' Comp. Appeals Bd. (2007, 2d Dist) 2007 Cal App LEXIS 606</u>.

Employee's claim for tortious discharge in violation of public policy under <u>Lab C § 132a</u> was not preempted by California Fair Employment and Housing Act (FEHA) or the workers' compensation laws. Roberts v. Boeing Co. (2006, CD Cal) 2006 US Dist LEXIS 96660.

3. Practice and Procedure

Lab C, §§ 132a and 4553, establish a civil/administrative remedy for cer:ain misconduct of the employer by way of an award of increased compensation separate and apart from any criminal misdemeanor sanction, and criminal proceedings are not involved. Thus the finding of a misdemeanor violation of § 132a is not a condition precedent to assertion of the civil/administrative remedy of the statute. Correspondingly, an award of increased compensation under the statute is not tantamount to finding the employer guilty of a misdemeanor. Accordingly, neither the workers' compensation judge nor the Workers' Compensation Appeals Board is, in such a case, required to follow the rules of criminal procedure, but rather, may follow usual administrative procedures utilized in workers' compensation cases. Furthermore, the employer is not entitled to a jury trial on an employee's petition for increased compensation under § 132a. Western Elec. Co. v. Workers' Compensation Appeals Bd. (Smith) (1979, Cal App 2d Dist) 99 Cal App 3d 629, 160 Cal Rptr 436, 1979 Cal App LEXIS 2361.

Proceedings under Lab C, § 132a, establishing a remedy for certain misconduct of the employer by way of an award of increased compensation to an injured worker, involves an administrative determination, and the usual preponderance of evidence standard of proof utilized in administrative proceedings applies, rather than the standard of proof for criminal prosecutions. Western Elec. Co. v. Workers' Compensation Appeals Bd. (Smith) (1979, Cal App 2d Dist) 99 Cal App 3d 629, 160 Cal Rptr 436, 1979 Cal App LEXIS 2361.

The court reviewing a decision of the Workers' Compensation Appeals Board is not bound by the board's conclusions on questions of law. The minimum factual elements which must be proven in order to constitute a violation of Lab C, § 132a, which provides a remedy for certain employer misconduct, and the sufficiency of the evidence to establish such a violation are questions of law. Western Elec. Co. v. Workers' Compensation Appeals Bd. (Smith) (1979, Cal App 2d Dist) 99 Cal App 3d 629, 160 Cal Rptr 436, 1979 Cal App LEXIS 2361.

Lab. Code, § 132a, which prohibits discrimination in any manner against a worker who is injured in the course and scope of his or her employment, proscribes certain actions triggered by the industrial injury which work to the detriment of the claimant, unless the actions are necessitated by the realities of doing business. The only reasonable procedure for implementing such a rule is to make it the claimant's burden to show the detriment, the action, and its cause, and the employer's burden to prove an affirmative defense of business realities. Smith v. Workers' Comp. Appeals Bd. (1984, Cal App 1st Dist) 152 Cal App 3d 1104, 199 Cal Rptr 881, 1984 Cal App LEXIS 1738.

Where a probationary state employee is rejected on probation for numerous reasons and the Workers' Compensation Appeals Board (the board) finds injury-related discrimination relating to some but not all of those reasons and orders the employee reinstated as a probationary rather than permanent employee, only the most manifest abuse of discretion could warrant judicial interference in that decision. Thus, in proceedings in which the board found that the Franchise Tax Board had discriminated against a probationary employee because of a work-related injury within the meaning of Lab. Code, § 132a, the board properly reinstated her as a probationary, not a permanent, employee, where the board did not find that the employee had performed or could perform up to the standards required by the employer, and did not find that but for her injury she would have successfully completed her probationary period. Dyer v. Workers' Comp. Appeals Bd. (1994, Cal App 3d Dist) 22 Cal App 4th 1376, 28 Cal Rptr 2d 30, 1994 Cal App LEXIS 160, review denied (1994, Cal) 1994 Cal LEXIS 2980.

Lab. Code, § 132a, prohibits discrimination against an employee based on a job-related injury regardless of whether the worker made or indicated an intent to make a workers' compensation claim. Although the section provides that such a worker is entitled to "reinstatement," it does not otherwise define reinstatement. However, reinstatement is a common rernedy in cases of employment discrimination, and, in such cases, courts are vested with broad equitable discretion in fashioning and applying an appropriate remedy. The Workers' Compensation Appeals Board has broad equitable powers with respect to matters within its jurisdiction, and Lab. Code, § 132a, makes clear that the Legislature intended the board to exercise its equitable powers with respect to matters of reinstatement. There is nothing in the statutory scheme indicating that the Legislature attached a different meaning to reinstatement than its usual meaning in employment discrimination cases or that it intended to circumscribe the board's discretionary authority. Dyer v. Workers' Comp. Appeals Bd. (1994, Cal App 3d Dist) 22 Cal App 4th 1376, 28 Cal Rptr 2d 30, 1994 Cal App LEXIS 160, review denied (1994, Cal) 1994 Cal LEXIS 2980.

To impose monetary remedies pursuant to Lab. Code, § 132a (discrimination against employee for filing workers' compensation claim), on a successor entity requires proof of the following: (1) there has been a substantial continuity of the former business enterprise, with substantially the same job classification and work force; (2) the successor took over the enterprise with notice of the § 132a claim or facts giving rise to such a claim; and (3) the successor has been provided with notice of the Workers' Compensation Appeals Board proceedings and afforded an opportunity to contest liability. Because reinstatement does not have the same consequences as monetary remedies, that remedy can be imposed even if the successor was unaware of a possible § 132a claim at the time of the change in ownership or management. Nevertheless, the first and third factors must be established. Superior Care Facilities v. Workers' Comp. Appeals Bd. (1994, Cal App 3d Dist) 27 Cal App 4th 1015, 32 Cal Rptr 2d 918, 1994 Cal App LEXIS 863.

Plaintiff could bring an action for physical disability discrimination pursuant to the California Fair Employment and Housing Act (Gov C §§ 12920 and 12940) in federal court as supplemental claims to his cause of action under the federal Americans with Disabilities Act. After the 1993 amendment to the Fair Employment and Housing Act, workers' compensation was not the exclusive remedy for such an action. Buckley v. Gallo Sales Co. (1996, ND Cal) 949 F Supp 737, 1996 US Dist LEXIS 18765.

Because of the wording of a cause of action (that plaintiff was attempting to allege a violation of <u>Lab C § 132a</u>), defendant was entitled to summary judgment. Alternatively, defendant was entitled to summary judgment because of the absence of any evidence from which it could be inferred that plaintiff was terminated in retaliation for the filing of his workers' compersation claim. <u>Leach v. Madera Glass Co.</u> (1998, ED Cal) 31 F Supp 2d 1223, 1998 US Dist LEXIS; 21672.

In an action by a former employee against a county employer alleging, inter alia, work-related injury discrimination, Lab C § 132a did not provide an exclusive remedy and did not preclude an employee from pursuing FEHA and common law wrongful discharge remedies. Fretland v. County of Humboldt (1999, Cal App 1st Dist) 69 Cal App 4th 1478, 82 Cal Rptr 2d 359, 1999 Cal App LEXIS 128.

Injured employee's workers' compensation claim entailing a Cal. Lab. Coce § 132a discrimination claim was not subject to the exclusive remedy rule. Amalgamated Transit Union Local 1277 v. Los Angeles County Metropolitan Transportation Authority (2003, Cal App 2d Dist) 107 Cal App 4th 673, 132 Cal Rptr 2d 207, 2003 Cal App LEXIS 467, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 652, review denied (2003, Cal) 2003 Cal LEXIS 4217.

Employer's policy of not cashing out unused excess vacation time for disabled employees prior to retirement for purposes of determining pension payments did not amount to a violation of Lab C § 132a because granting relief to such employees would have mere allowed them to obtain additional benefits that other non-disabled employees were not entitled to receive. Los Angeles County Prof. Peace Officers' Assn. v. County of Los Angeles (2004, Cal App 2d Dist) 115 Cal App 4th 866, 9 Cal Rptr 3d 615, 2004 Cal App LEXIS 171, review denied (2004, Cal) 2004 Cal LEXIS 4505.

Terminated employee's claim pursuant to Lab C § 1102.5 was barred by the federal enclave doctrine because the state law on which the claims were based were enacted after the federal government obtained jurisdiction of the Naval Reservation on which the nuclear power plant at which the employee worked was located. Stiefel v. Bechtel Corp. (2007, SD Cal) 49.7 F Supp 2d 1138, 2007 US Dist LEXIS 26848.

HEADNOTES FROM CALIFORNIA COMPENSATION CASES

Civil Actions--Malicious Prosecution:

Court of Appeal affirmed trial court's holding that injured worker/applicant's attorneys were not liable on malicious prosecution theory for bringing Labor Code § 132a discrimination claim on applicant's behalf, when applicant claimed injury AOE/COE in 1991 and filed claim for workers' compensation benefits and petition for benefits under Labor Code § 132a, plaintiff (applicant's employer) filed civil action against applicant's attorneys for malicious prosecution for filing Labor Code § 132a petition, trial court judge found that, at time of filing Labor Code § 132a petition, information available to applicant's attorneys indicated applicant had been laid off, then filed claim, then was terminated, applicant's attorneys thus had probable cause to file Labor Code § 132a petition, absence of probable cause was necessary element of malicious prosecution, and plaintiff therefore did not prove malicious prosecution. Gary Drilling Co. v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 130; 70 Cal. Comp. Cases 703 (Cal. App. 5th Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 26.01[1].]

Civil Actions--Wrongful Discharge:

Court of Appeal held retaliation for filing workers' compensation claim in v olation of <u>Labor Code § 132a</u> could be basis of common law wrongful discharge cause of action and trial court erred in sustaining defendant's demurrer in plaintiff/applicant's civil action against defendant for wrongful discharge in violation of public policy. Burton v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1480; 67 Cal. Comp. Cases 1132 (Cal. App. 4th Dist. 2002) See generally Hanna, Cal.

<u>Law of Emp. Inj. and Workers' Comp. 2d § § 2.62</u>[2][e], 2.70[1], 10.60[4], 11.05[4], [5], 21.03[2] [b].]

Civil Actions Against Employers--Fair Employment and Housing Act--<u>Labor Code § 132a</u>--Collateral Estoppel:

In portion of opinion not certified for publication, Court of Appeal held that WCAB 2003 determination did not bar, or have collateral estoppel effect on, plaintiff/applicant's civil FEHA action for disability discrimination, when in 2003 WCAB issued findings and award that defendant did not discriminate against applicant in violation of Labor Code § 132a, applicant brought civil action under FEHA for disability discrimination under Government Code § 12940(a), based on Hepatitis C condition contracted from work in prisons as stationary engineer, Court of Appeal found issues were different in Labor Code § 132a proceeding and FEHA disability discrimination action, burdens of proof were different, Labor Code § 132a did not specifically require employers to provide reasonable accommodation for disabilities of employees, determinations of what constituted discrimination were different under Labor Code § 132a and FEHA, and Labor Code § 132a provided less accommodation for disabilities than FEHA. Green v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 290, 132 Cal. App. 4th 97; 33; 70 Cal. Comp. Cases 1254 (Cal. App. 4th Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 10.60[4], 11.05[4], 21.03[2][d], 21.07[7].]

Collective Bargaining Agreements--Arbitration Proceedings--Due Process:

WCAB did not deny defendant due process by failing to rely on union arbitrator's finding that defendant did not violate union contract, in WCAB <u>Labor Code § 132a</u> proceeding. Pacific Coast Producers v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5126; 66 Cal. Comp. Cases 952 (Cal. App. 5th Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 1.04, 21.08[2][d].]

Discovery--Attorney-Client Privilege:

WCAB found that summary prepared by defendant for defense counsel that included information regarding applicant's employment as well as personal information about applicant was privileged pursuant to attorney-client privilege, and that disclosure of summary to defendant's insurer, who hired defense counsel to defend defendant against applicant's <u>Labor Code § 132a</u> claim, did not constitute waiver of privilege because insurer was joint client of defense counsel; WCAB found that crime/fraud exception to attorney-client privilege did not apply in this case because there was no evidence that defense counsel was hired to enable or aid defendant in commission of crime or fraud. Lamouree v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 74; 70 Cal. Comp. Cases 640 (Cal. App. 4th Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 25.40[1].]

Discrimination--Labor Code § 132a:

WCAB held that employer violated <u>Lab. C. § 132a</u> by prohibiting applicant, who injured his right lower extremity and ankle on 6/21/2000, from working weekends during period 1/29/2001 through 9/16/2003, when applicant was found to be P&S on 1/29/2001 and, at that time, was released from light duty to permanent restricted duty, performing his usual and customary job duties. Anheuser-Busch, Inc. v. Dadorian, 2006 Cal. Wrk. Comp. LEXIS 137; 71 Cal. Comp. Cas 667 (Cal. App. 2d Dist. 2006).

WCAB found that defendant's refusal to return applicant to his usual and customary work as truck driver following his 7/18/2001 shoulder injury constituted discrimination under Labor Code § 132a, when applicant was medically released to return to work with only restriction that he required use of power steering truck, defendant's refusal to return applicant to work was based, in part, on terms of collective bargaining agreement that were contrary to state law, defendant could have reasonably accommodated applicant's work restriction by providing him with power steering truck, and evidence indicated that defendant selectively accommodated certain disabled employees who required accommodation to return to work but declined to accommodate applicant. Roadway Express, Inc. v. Workers' Compensation Appeals Bd., 2006 Cal. Wrk. Comp. LEXIS 180; 71 Cal. Comp. Cas 864 (Cal. App. 6th Dist. 2006). [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a].]

WCAB held that defendant violated <u>Labor Code § 132a</u> by terminating applicant who sustained admitted back injury on 2/27/2003, when applicant had returned to full cluty after injury and was performing job duties without difficulty, applicant's treating physicians and defense qualified medical evaluator opined that applicant had lifting restrictions but that he could continue working full duty, and defendant's risk manager terminated applicant without knowledge of lifting requirements of applicant's job and without medical evidence indicating that there was risk of re-injury or that applicant was unable to perform his job duties. Roadway Express, Inc. v. Workers' Compensation Appeals Bd., 2006 Cal. Wrk. Comp. LEXIS 369; 71 Cal. Comp. Cas 1618 (Cal. App. 6th Dist. 2006). [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a].]

WCAB held defendant did not discriminate against applicant in violation of Labor Code § 132a by failing to reinstate applicant when his primary treating physician released him to return to full duty, when WCAB found that applicant sustained back injuries AOE/COE in 1993 and 2002, his treating physician released him to return to unrestricted customary duties as petroleum products truck driver in 4/21/2004 report, in 8/31/2004 deposition same treating physician incicated applicant had some restrictions, defense qualified medical evaluator indicated applicant could return to work if defendant could accommodate some restrictions, and defendant's reliance on defense qualified medical evaluator's report and treating physician's deposition testimony were reasonable support for denying reinstatement to applicant's usual and customary job duties. Cervantes v. Workers' Compensation Appeals Bd., 2006 Cal. Wrk. Comp. LEXIS 409; 71 Cal. Comp. Cas 1841 (Cal. App. 2d Dist. 2006). [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 10.11[1]-[4], 25.05[5].]

WCAB applied principles set forth in Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cases 831, to find that defendant did not violate Labor Code § 132a by sending temporarily disabled applicant letter stating that she had voluntarily abandoned her job and was not eligible for temporary disability benefits, when defendant later retracted letter, there was no evidence applicant was terminated frcm her job, defendant did not deprive applicant of her status or benefits, applicant returned to work after receiving medical release, and there was no showing that applicant suffered detriment as consequence of defendant's actions. Garratt v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 318; 70 Cal. Comp. Cases 1598 (Cal. App. 2nd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2].]

WCAB applied principles set forth in Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cases 831, to find that defendant did not violate Labor Code § 132a by sending temporarily disabled applicant letter stating that she had voluntarily abandoned her job and was not eligible for temporary disability benefits, when defendant later retracted letter, there was no evidence applicant was terminated frcm her job, defendant did not deprive applicant of her status or benefits, applicant returned to work after receiving medical release, and there was no showing that applicant suffered detriment as consequence of defendant's actions. Garratt v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 318; 70 Cal. Comp. Cases 1598 (Cal. App. 2nd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2].]

WCAB found that defendant who terminated injured applicant for engagir g in extremely severe violation of defendant's safety policy acted with discrimination, when policy prescribed disparate discipline for same act, depending upon whether act did or did not result in injury, and WCAB found that this disparate treatment constituted per se violation of Labor Code § 132a. A. Teichert & Sons, Inc., PSI v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 112; 70 Cal. Comp. Cases 710 (Cal. App. 3rd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a], [3][c].]

WCAB applied principles set forth in Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cases 831, to find that defendant did not violate Labor Code § 132a by delaying applicant's return to modified duty after applicant received return-to-work release with substantial restrictions, when applicant failed to prove that he had legal right to modified job within less time than job was provided and that defendant had legal duty to provide modified job at earlier time. Gallant v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 43; 70 Cal. Comp. Cases 485 (Cal. App. 2nd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a], [3][a], [b].]

Court of Appeal, affirming WCAB decision, held that applicant, former employee of defendant, was not entitled to "increased benefits" under Labor Code § 132a for former employer's alleged discrimination against applicant, when applicant voluntarily resigned from her job with defendant, then filed civil lawsuit against defendant, alleging violation of California Fair Employment and Housing Act, later filed claim for workers' compensation benefits, applied for disability retirement benefits, and finally filed claim for increased benefits with WCAB, alleging defendant had failed to process her disability retirement claim in timely manner because she had filed workers' compensation claim, in violation of Labor Code § 132a, when Court of Appeal found that applicant was former employee, not "employee" within meaning of Labor Code § 132a. Sepulveda-Huth v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 60; 70 Cal. Comp. Cases 152 (Cal. App. 5th Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a].]

WCAB, reversing WCJ's decision, found that defendant did not discriminate against applicant/stage technician in violation of Labor Code § 132a under principles set forth in Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cas 831, by changing applicant's employment status from weekly call-back to daily call-back and subsequently terminating applicant's employment following his return to work from industrial injury, when applicant failed to prove that he had legal right to weekly call-back status, that his eventual termination resulted from this change in status, or that he was singled out for disadvantageous treatment because of his industrial injury. Micevski v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 19; 70 Cal. Comp. Cases 252 (Cal. App. 2nd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a], [3][a], [b].]

WCAB applied standard set forth in Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cas 831, To find that applicant failed to establish by preponderance of evidence that defendant terminated her in violation of Labor Code § 132a, when applicant was terminated pursuant to defendant's policy of terminating employees absent for three-day period without medical certification, evidence showed that applicant failed to provide medical substantiation for her absence, and defense witnesses credibly testified that defendant's policy was applied equally to all employees. Robinson v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 7; 70 Cal. Comp. Cases 262 (Cal. App. 1st Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2], [3][c].]

WCAB held that applicant, who was terminated from his employment while temporarily disabled as result of 5/6/99 industrial injuries to his face, mouth, psyche, neck, shoulder, back, chest, and in form of scars and headaches, failed to meet his burden of establishing prima facie case of discrimination under Labor Code § 132a, when he did not allege or present evidence that his termination resulted from his industrial injuries, but rather attributed his termination to his union activity. Hallford v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 379; 71 Cal. Comp. Cases (Cal. App. 5th Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a].]

WCAB held that defendant discriminated against applicant in violation of <u>Labor Code § 132a</u> when it terminated applicant on 6/13/2001, when WCAB found that applicant sustained industrial injury on 1/2/2001, returned to light duty, and then returned to full duty, that applicant's treating physician took her off work for additional period of temporary disability, that defendant had received treating physician's certification of new period of temporary disability by time of applicant's termination, and that defendant terminated applicant for no valid reason, and WCAB found that testimony from defense witnesses was not credible on issues of timing and explanation for termination. Valley Heights, Inc. v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 372; 71 Cal. Comp. Cases -- (Cal. App. 5th Dist. 2005) [See generally <u>Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1]-[3].</u>]

WCAB held defendant did not violate <u>Labor Code § 132a</u> by terminating applicant on 6/1/98, when WCAB found termination was due to poor performance as car salesperson and finance/insurance manager and poor relations with customers and co-workers, not because applicant filed workers' compensation claims. Winston v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 372; 69 Cal. Comp. Cases 1629 (Cal. App. 3rd Dist. 2004) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10,11[1]-[3].]

WCAB found that defendant violated <u>Labor Code § 132a</u> by terminating applicant in 1/2001 based on unsubstantiated opinion of its human resources supervisor that applicant had tampered with doctor's signature on off-work documentation provided by applicant to justify his absences from work due to industrial injury, when WCAB found that applicant had complied with defendant's requests to provide documentation for his absences and defendant did not verify documentation from doctor. Daimler Chrysler Corp., PSI v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 326; 69 Cal. Comp. Cases 1327 (Cal. App. 2nd Dist. 2004) [See generally <u>Hanna</u>, Cal Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

WCAB determined that defendant did not violate <u>Labor Code § 132a</u> by terminating applicant who was on modified duty after sustaining a 6/27/2001 industrial injury to his abcomen, when WCAB found that termination was based solely on applicant's failure to produce medical note substantiating reasons for three absences from work in violation of collective bargaining agreement requiring doctors' notes for both industrial and non-industrial medical absences, and applicant did not offer substantial evidence to support conclusion that he was terminated as result of his industrial injury. Pate v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 328; 69 Cal. Comp. Cases 1339 (Cal. App. 4th Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

WCAB found that applicant's employer did not violate <u>Labor Code § 132a</u> by terminating applicant's employment benefits and failing to re-hire him after his industrial injury, when applicant did not return to work after being released to modified duty by his doctor, did nct communicate with his employer regarding his disability status, employer's assets were purchased by another business in arms-length transaction after which all of its employees' benefits were terminated, new business owner re-hired most, but not all, of employer's employees, and new owner had no duty to seek out applicant for re-hire. Smith v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 132; 69 Cal. Comp. Cases 521 (Cal. App. 3rd Dist. 2004) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[3].]

WCAB found applicant failed to establish that defendant terminated him in violation of Labor Code § 132a, when evidence showed applicant had excessive absenteeism from work without medical documentation, applicant did not establish that absences were due to industrial injury, applicant did not demonstrate that defendant was aware of alleged reason for his absences, and applicant did not show any causal connection between his claim of industrial injury and his termination, and WCAB held that finding of industrial injury is not required for finding that employer has violated Labor Code § 132a. Mamaghani v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 92; 69 Cal. Comp. Cases 417 (Cal. App. 2nd Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [3].]

Court of Appeal denied defendant employer's petition for writ of review and affirmed WCAB's finding that defendant discriminated against applicant in violation of Labor Code § 132a, when evidence on which WCAB relied included defendant's behavior consistent with termination of applicant in retaliation for filing workers' compensation claim. Crown Appliance v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 35; 115 Cal. App. 4th 620; 9 Cal. Rptr. 3d 415; 69 Cal. Comp. Cases 55 (Cal. App. 5th Dist. 2004) [See generally Hanna, Cal. Law of Ernp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a], [b].]

WCAB found that applicant's employer did not terminate applicant in violation of <u>Labor Code § 132a</u>, when there was no evidence that termination was related to applicant's industrial injury and defendant showed that it had good cause to terminate applicant based on poor job performance. Jackson v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 226; 69 Cal. Comp. Cases 1035 (Cal. App. 2nd Dist. 2004) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[3][c].]

WCAB found applicant did not sustain her burden of proof that, as result of her claim of industrial injury to psyche during period through 2/10/2000, defendant engaged in conduct detrimental to applicant in violation of <u>Labor Code § 132a</u>, when record contained no evidence as to why or when applicant's employment was terminated. Corriveau v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 233; 69 Cal. Comp. Cases 1096 (Cal. App. 1st Dist. 2004).

Court of Appeal held WCAB could order reinstatement under Labor Code 3 132a despite concurrent

proceedings before State Personnel Board, WCAB could not refuse to consider case because of those concurrent proceedings, and WCAB could exercise restraint in making re nstatement determinations. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 73; 68 Cal. Comp. Cases 149 (Cal. App. 3rd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11[1].]

WCAB held defendant employer violated <u>Labor Code § 132a</u> by refusing to allow applicant delivery driver to return to work after being released to full duties by his treating physician for 9/19/2000 admitted industrial neck injury, when treating physician declared applicant was permanent and stationary, with restrictions, later changed his mind and in 12/12/2001 report released applicant to return to work without restrictions, defendant's management and legal staff thought it was not medically reasonable and appeared fraudulent for treating physician to change his mind, WCAB found treating physician was entitled to presumption of correctness of <u>Labor Code § 4062.9</u> [repealed <u>Stats 2004 ch 34 § 22</u>], and defendant had no reasonable or good faith basis to refuse to return applicant to his usual position after defendant received treating physician's 12/12/2001 report. Pepsi Bottling Group v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 591; 68 Cal. Comp. Cases 1882 (Cal. App. 4th Dist. 2003) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1].]

Court of Appeal held argument by defense that applicant, a family nurse practitioner, had not exhausted her administrative remedies before State Personnel Board did not apply in litigation over reinstatement under Labor Code § 132a, and Court of Appeal annulled WCAB decision that denied reinstatement because applicant had not exhausted her administrative remedies. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 73; 68 Cal. Cornp. Cases 149 (Cal. App. 3rd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Ccmp. 2d § § 4.65[2], 10.11 [1].]

Court of Appeal held WCAB could order reinstatement under <u>Labor Code § 132a</u> despite concurrent proceedings before State Personnel Board, WCAB could not refuse to consider case because of those concurrent proceedings, and WCAB could exercise restraint in making reinstatement determinations. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEKIS 73; 68 Cal. Comp. Cases 149 (Cal. App. 3rd Dist. 2003) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1].]

Court of Appeal held argument by defense that applicant, a family nurse practitioner, had not exhausted her administrative remedies before State Personnel Board did not apply in litigation over reinstatement under Labor Code § 132a, and Court of Appeal annulled WCAB decision that denied reinstatement because applicant had not exhausted her administrative remedies. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 73; 68 Cal. Comp. Cases 149 (Cal. App. 3rd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Ccmp. 2d § § 4.65[2], 10.11 [1].]

WCAB held applicant's mere allegation that defendant delayed paying or providing medical treatment for applicant's 1991 and 1997 industrial injuries was not allegation of type of detrimental conduct required by case law to support finding of employer discrimination under Labor Code § 132a, and WCAB also held there was insufficient evidence to support finding of conspiracy or fraud related to alleged delay. Rice v. Workers' Compensation Appeals Bd., 2003 Cal. Wr<. Comp. LEXIS 553; 68 Cal. Comp. Cases 1736 (Cal. App. 1st Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

Court of Appeal issued opinion denying petition for writ of review of decision in which WCAB found employer did not violate Labor Code § 132a by terminating applicant, when employer had policy to suspend and/or terminate employees with eight unexcused tardy incidents during one year, applicant was twice warned of possible termination after she was tardy nine times, applicant was tardy tenth time because she was calling her doctor, defendant terminated applicant after tenth time of being tardy, termination was because of extent of tardiness, not because of applicant's claimed industrial injury, and industrial injury did not cause applicant to be late tenth time because applicant could have telephoned her doctor during times when she was not scheduled to work. Zepeda v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 475; 68 Cal. Comp. Cases 1330 (Cal. App. 5th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1].]

WCAB held applicant did not make prima facie case of discrimination because applicant did not establish necessary element, i.e., detriment, when defendant required injured employees to present disability slips from physicians in person at defendant's plant, parties agreed to submit discrimination issue on record without any testimony from applicant in support of her d scrimination claim, and WCAB found defendant's policy was "mere inconvenience" for injured employees and not detrimental. Bolanger v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 413; 68 Cal. Comp. LEXIS 1188 (Cal. App. 5th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a].]

California Supreme Court held applicant did not demonstrate discrimination under <u>Labor Code § 132a</u> when defendant used applicant's sick leave and vacation leave for time when applicant, who had become permanent and stationary and returned to work following industrial injury, took off work to attend medical appointments for that injury. California Dep't of Rehabilitation v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 377; 30 Cal. 4th 1281; 70 P.3d 1076; 135 Cal. Rptr. 2d 665; 68 Cal. Comp. Cases 831 [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1].]

WCAB held employer did not violate Labor Code § 132a by placing applicant's name on reemployment list while he was receiving temporary disability for industrial injuries, when WCAB found employer sent applicant letter indicating his paid leave benefits were exhausted and it was placing his name on re-employment list, paid leave benefits here meant sick leave and vacation leave, not workers' compensation benefits, employer's action was mandated by its interpretation of Education Code § 45192 and collective bargaining agreement between employer and applicant's union, and employer showed business necessity for its action by establishing that applicant's leave benefits had been exhausted. Romero v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 391; 68 Cal. Comp. Cases 1250 (Cal. App. 2nd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1], [2][b].]

WCAB held defendant did not violate <u>Labor Code § 132a</u> after applicant voluntarily terminated herself by failing to respond to absence without leave notice, and defendant showed business necessity defense with its absence without leave policy. Keener v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 324; 68 Cal. Comp. Cases 957 (Cal. App. 3rd Dist. 2003) [See generally, Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2][b], [3].

WCAB held when applicant's <u>Labor Code § 132a</u> claim alleged discriminatory discharge, applicant was required to show only that discharge occurred before employer knew whether applicant would be able to return to work. A&M Towing v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 231; 68 Cal. Comp. Cases 456 (Cal. App. 4th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1]-[4].]

WCAB held defendant violated <u>Labor Code § 132a</u> by terminating applicant school campus aide in 8/95 after her 3/4/94 industrial neck injury, when WCAB found there was conflicting medical evidence regarding applicant's work restrictions, but defendant chose to rely on medical evidence that precluded applicant from being involved in physical altercations without further investigation and without obtaining formal job analysis for review by treating physician, and when WCAB found involvement in physical altercations was not usual job duty for applicant. Riverside Unified School Dist., PSI v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. I.EXIS 94; 68 Cal. Comp. Cases 283 (Cal. App. 4th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [3][a].]

WCAB held applicant made showing of discrimination per se and did not need to make showing of detriment under Labor Code § 132a, when applicant was fired on 3/11/98 during telephone call from defendant owner on day of shoulder surgery and while applicant was receiving temporary total disability benefits, firing was because applicant had industrial injury on 6/27/97 and filed claim for workers' compensation benefits, firing was discrimination per se under wording of Labor Code § 132a, applicant did not need to show actual detriment because discharge here was discrimination per se, and, alternatively, if applicant was required to show detriment, he did so, because applicant, in being fired, suffered mark on his employment record and thereby suffered detriment in any potential future job search. A&M Towing v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 231; 68 Cal. Comp. Cases 456 (Cal. App. 4th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and

Workers' Comp. 2d § 10.11[1]-[4].]

WCAB found that defendant violated Labor Code § 132a by failing to return applicant to her employment based on treating physician's reports despite applicant's continued requests to be reinstated, when treating physician's reports were unclear in that they permanently precluded applicant from "sustained repetitive manipulation bilaterally" but repeatedly indicated that she was able to return to her usual work, defendant maintained that job restrictions imposed by treating physician were inconsistent with applicant's job duties, but defendant made no attempt to clarify physician's reports and did not undertake its own medical evaluation until two years after it denied applicant's requests to return to work. Chevron Products Co., PSI v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 425; 70 Cal. Comp. Cases 228 (Cal. App. 1st Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2]; Attorneys' Textbook of Medicine, Chs. 3B, 5; Common Diagnostic Procedures, Chs. 21, 25B.]

Court of Appeal held WCAB could order reinstatement under <u>Labor Code § 132a</u> despite concurrent proceedings before State Personnel Board, WCAB could not refuse to consider case because of those concurrent proceedings, and WCAB could exercise restraint in making reinstatement determinations. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 73; <u>68 Cal. Comp. Cases 149 (Cal. App. 3rd Dist. 2003)</u> [See generally <u>Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11[1].]</u>

Court of Appeal held argument by defense that applicant, a family nurse practitioner, had not exhausted her administrative remedies before State Personnel Board did not apply in litigation over reinstatement under Labor Code § 132a, and Court of Appeal annulled WCAB decision that denied reinstatement because applicant had not exhausted her administrative remedies. Parker v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 73; 68 Cal. Comp. Cases 149 (Cal. App. 3rd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11 [1].]

WCAB found that defendant violated <u>Labor Code § 132a</u> by terminating applicant's health benefits while she was out of work on industrial leave, and that defendant's termination of applicant's health benefits was not justified under <u>Government Code § 12945.2</u>, the California Families Rights Act. Merced City School Dist. v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1229; 67 Cal. Comp. Cases 192 (Cal. App. 5th Dist. 2002) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

WCAB held defendant did not violate <u>Labor Code § 132a</u> and there was business necessity for terminating applicant when applicant's treating physician indicated applicant had permanent lifting restriction that would prevent her from performing her job duties, defendant had no other job available, and termination was because of applicant's physical inability to perform her job. Oblia v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1301; 67 Cal. Comp. Cases 480 (Cal. App. 3rd Dist. 2002) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1], [2][b], [3][a].]

WCAB held defendant did not violate <u>Labor Code § 132a</u> when it refused to provide applicant or her family with tickets to company picnic, when defendant's company policy was to not provide tickets for employees who had been on leave of absence, for industrial or non-industrial reasons, defendant would not provide tickets for applicant's family when applicant could not attend picnic, and applicant did not show detriment from defendant's refusal to provide tickets. Oblia v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1301; 67 Cal. Comp. Cases 480 (Cal. App. 3rd Dist. 2002) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1].]

WCAB found that defendant violated <u>Labor Code § 132a</u> by deducting sick time from applicant's account for time applicant was off work due to her industrial injury, since sick time was one of benefits defendant conferred on its employees and its deprivation solely because applicant sustained work injury constituted detriment to applicant. Los Angeles County Health Dep't, PSI v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1380; <u>67 Cal. Comp. Cases 827 (Cal. App. 2nd Dist. 2002)</u> [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

WCAB found that defendant violated <u>Labor Code § 132a</u> by laying off app icant, special effects man working on temporary project for defendant at time of his injury, when applicant established he was

laid off after leaving work for treatment of industrial injury and defendant presented no rebuttal evidence, even though temporary nature of applicant's work may have required that he be replaced, and temporary nature of applicant's work for defendant did not preclude finding of Labor Code § 132a violation. Warner Bros. v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1389; 67 Cal. Comp. Cases 858 (Cal. App. 2nd Dist. 2002) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

WCAB held defendant violated <u>Labor Code § 132a</u> by refusing to return applicant to work on 9/5/2000, when WCAB found applicant high school teacher had 9/23/99 industrial injury from trying to break up fight at school, her treating physician released her to return to work on 9/5/2000, and defense qualified medical evaluator indicated applicant could return to work as of 3/8/2000. Bellflower Unified School Dist. v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 742; 68 Cal. Comp. Cases 55 (Cal. App. 2nd Dist. 2002) [See generally <u>Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1].</u>]

WCAB found that defendant violated <u>Labor Code § 132a</u> by terminating applicant on the basis that he did not work long enough to qualify for short-term benefits, and that such termination was discriminatory because applicant's industrial injury was part of triggering chain of events leading to termination. Pacific Bell, PSI v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4873; 66 Cal. Comp. Cases 298 (Cal. App. 3rd Dist. 2001) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

Employer violated <u>Labor Code § 132a</u> by ceasing payments to union Employee Retirement Income Security Act trust fund under terms of collective bargaining agreement between employer and applicant's union, while applicant was on temporary total disability for industrial injury, resulting in applicant losing health insurance coverage. Argonaut Constructors v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4861; 66 Cal. Comp. Cases 255 (Cal. App. 1st Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 1.03, 4.65[2], 10.11[1].]

WCAB held defendant did not violate <u>Labor Code § 132a</u> by refusing to reinstate applicant to alternate position after her request for Public Employees Retirement System disability retirement was denied; WCAB found no evidence there was alternate work available at that time within applicant's abilities and restrictions and also found business necessity for defendant's conduct. Long v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4910; 66 Cal. Comp. Cases 403 (Cal. App. 1st Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11 [1].]

WCAB held defendant, placement agency for security guards, violated <u>Labor Code § 132a</u> by refusing to reinstate applicant to job as security guard supervisor after full medical release, finding that, although position at location where applicant was injured was no longer available, defendant had duty to make reasonable efforts to place applicant elsewhere and did not show business necessity for refusal to reinstate applicant. Strategic Security Services, Inc. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4968; 66 Cal. Comp. Cases 552 (Cal. App. 1st Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

WCAB held defendant did not violate <u>Labor Code § 132a</u> by taking applicant off work or by refusing to allow applicant to return to his job as street maintenance worker, when \VCAB found that defendant had good-faith belief (based on information from applicant's qualified medical examiner) that applicant was physically unable to perform his usual duties and/or was at risk of re-injury if he performed his usual duties and that defendant had not terminated applicant. Rossi v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4965; 66 Cal. Comp. Cases 538 (Cal. App. 3rd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11 [1].]

WCAB held defendant violated <u>Labor Code § 132a</u> by failing to allow applicant to return to her job, when agreed medical examiner found that applicant was not qualified injured worker, her treating physician released applicant to return to her usual and customary job duties with use of ergonomic chair, and applicant testified that ergonomic chair was available. Southern California Permanente Medical Group v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Ccmp. LEXIS 5018; 66 Cal. Comp. Cases 660 (Cal. App. 2nd Dist. 2001) [See generally <u>Hanna</u>, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11[1], 21.07[7], 24.03[10].]

WCAB found that defendant did not meet burden of proving business necessity for terminating applicant, when defendant failed to establish that applicant was unable to perform duties of alternative job or was in danger of reinjuring himself. American Modular Sys., Inc. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5048; 66 Cal. Comp. Cases 729 (Cal. App. 3rd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2][b].]

Applicant established prima facie case that employer had violated <u>Labor Code § 132a</u> when it terminated applicant for failure to sign RU-94 form accepting employer's alternative job offer in writing, even though he had been performing at alternative position for one month when terminated, and applicant's treating physician had not reviewed RU-94 description of job duties to see whether they were compatible with limitations from applicant's 1998 low back inclustrial injury. American Modular Sys., Inc. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5048; 66 Cal. Comp. Cases 729 (Cal. App. 3rd Dist. 2001) [See generally Hanna, Cal. _aw of Emp. Inj. and Workers' Comp. 2d § 10.11[2][a].]

WCAB found defendant violated <u>Labor Code § 132a</u> by removing applicant from employment and failing to show business necessity for removal, when applicant had returned to work after his 1997 admitted back injury, was performing his duties, was removed from employment after asking employer for assistance when assigned to perform four-person task with only two persons (himself and one other), and at time of removal there was no medical evidence that applicant could not perform his job duties. City of Alhambra, PSI, Colen and Lee v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5109; 66 Cal. Comp. Cases 896 (Cal. App. 2nd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11[1], [2][b].]

WCAB found that applicant, who claimed she sustained industrial injury on 6/28/94, was unlawfully terminated on 7/4/94 in violation of Labor Code § 132a, and that defendant did not prove defense of business realities, when documentary evidence and credibility of applicant's and defendant employer's testimonies, among other things, indicated that defendant dismissed applicant on basis of allegation of fraud in faking injury. Pacific Enterprises, Inc. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5127; 66 Cal. Comp. Cases 955 (Cal. App. 2nd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11[1], [2][b].]

WCAB held that defendant did not violate <u>Labor Code § 132a</u> by applying for disability retirement on behalf of applicant/deputy sheriff who had suffered permanent disability and was prophylactically restricted from certain activities, when defendant's actions did not result in loss of work, wages, or benefits to applicant, and applicant was unable to show that he suffered any detriment. Guerin v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5170; <u>66 Cal. Comp. Cases 1092 (Cal. App. 4th Dist. 2001)</u> [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [3].]

Court of Appeal held applicant did not make prima facie showing that defendant violated Labor Code § 132a when defendant (1) did not provide applicant with full year of Labor Code § 4850 benefits and stopped Labor Code § 4850 benefits when applicant's retirement began, and (2) retired applicant before severance package was offered to employees (here, applicant voluntarily retired before defendant decided to offer employees voluntary separation package); alternatively, court held that if applicant made prima facie case of discrimination, defendant acted pursuant to Labor Code § 4850 and Government Code § 21156 and actions represented business necess ty. Lima v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5209; 66 Cal. Comp. Cases 1169 (Cal. App. 3rd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11 [1], [2][b].]

WCAB held defendant violated <u>Labor Code § 132a</u> by not allowing applicant bus driver to return to work on 5/17/99, after she was able to return to work according to her treating physician and her qualified medical examiner; WCAB found defendant's actions were not the result of business necessity, which is a defense to a <u>Labor Code § 132a</u> violation, and defendant's actions appeared to be based on its narrow interpretation of collective bargaining agreement and inattention to medical record and not based on defendant's fear that applicant risked reinjuring herself if she returned to work, especially when defendant admitted that other bus drivers had returned to work after hip replacement surgery or back surgery. Alameda-Contra Costa Transp. Dist., PSI, et al. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5256; 66 Cal. Comp. Cases 1329 (Cal. App.

1st Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2], [3].]

WCAB held applicant did not make prima facie showing of <u>Labor Code § 132a</u> discrimination for 10/24/97 termination, finding that termination was not due to applicant's cumulative industrial injury to psyche (stress) ending 6/26/97 but was for violation of civil service regulations and policies (insubordination in refusing to attend fitness for work medical examination). Rice v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5334; 66 Cal. Comp. Cases 1569 (Cal. App. 1st Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11 [1].]

WCAB found that credible witness testimony coupled with medical evider ce supported determination that defendant violated Labor Code § 132a by terminating applicant for exercising his right under Labor Code § 4600 to pre-designate his treating physician; WCAB found no support for defendant's contention that applicant was terminated for being dishonest about his physical condition. Texaco Exploration and Production v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5378; 67 Cal. Comp. Cases 99 (Cal. App. 5th Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2].]

Discrimination--Labor Code § 132a--Back Wages:

WCAB awarded applicant \$441,880 in back wages plus prejudgment interest after employer's <u>Labor Code § 132a</u> violation, by considering applicant's post-injury wages and testimony from two economic experts on what applicant's projected earnings would have been had he continued working for defendant, post-injury. Taco Bell v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1453; 67 Cal. Comp. Cases 1067 (Cal. App. 3rd Dist. 2002) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11.]

Discrimination--Labor Code § 132a--Business Necessity:

Court of Appeal, annulling WCAB decision, held that applicant, who had returned to work following injury AOE/COE, failed to establish prima facie case of discrimination and that substantial evidence supported defendant's claim of reasonable business necessity in terminating applicant's employment, when record contained no evidence that applicant was singled out for disadvantageous treatment, as required by Department of Rehabilitation v. W.C.A.B. (Lauher) (2003) 30 Cal. 4th 1281, 135 Cal. Rptr. 2d 665, 70 P.3d 1076, 68 Cal. Comp. Cases 831, and when record showed that defendant removed applicant from job only upon determining that applicant's treating physician and qualified medical evaluator had imposed work restrictions incompatible with applicant's job, making applicant unable to perform customary work without risk of either re-injury or further injury. County of San Luis Obispo v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 289; 70 Cal. Comp. Cases 1247 (Cal. App. 2nd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][a], [b], [3][a].]

WCAB found that defendant's decision to permanently replace applicant in her managerial position following her one and one-half year absence from work due to temporary total disability, and its subsequent refusal to re-employ applicant in that position after her medical release, was based on good faith business necessity and did not violate <u>Labor Code § 132a</u>, when evidence established that defendant's attempts to fill applicant's job duties with other full-time employees at extra expense presented undue hardship. Robbins v. Workers' Compensation Appeals Bd., 2005 Cal. Wrk. Comp. LEXIS 343; 70 Cal. Comp. Cases 1738 (Cal. App. 3rd Dist. 2005) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2][b].]

WCAB determined that defendant did not violate Labor Code § 132a by refusing to return applicant to work after agreed medical examiner found that applicant could return to his usual and customary duties but also imposed work restrictions that exceeded the demands of applicant's job, as described in the job analysis, when defendant had legitimate business necessity for not returning applicant to work prior to further investigation of applicant's physical ability to perform his job so that his return to work would not pose risk of re-injury to himself or injury to others. White v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 133; 69 Cal. Comp. Cases 525 (Cal. App. 4th Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10 11[2], [3].]

WCAB held defendant did not prove business necessity for terminating applicant, when defendant did

not show applicant had job restrictions that actually conflicted with her job duties and made her incapable of performing her usual and customary duties. Riverside Unified School Dist., PSI v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 94; 63 Cal. Comp. Cases 283 (Cal. App. 4th Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][b].]

Defendant cab company did not violate <u>Labor Code § 132a</u> when it took applicant/taxi cab driver out of service after he reported that he sustained industrial injuries in motor vehicle accident, when WCAB found that defendant's adverse employment action was justified by "bus ness necessity" as shown by credible evidence that applicant was "taken out of service" after failing to complete accident report as requested by his supervisor pursuant to company rules, civil lawsuit was pending involving applicant's accident, and applicant was ineligible to return to service because his taxi cab operator's license was suspended by Department of Motor Vehicles during period he remained out of service. Badache v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 321; 58 Cal. Comp. Cases 932 (Cal. App. 1st Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[3].]

WCAB held defendant did not show business necessity for refusal to return applicant to work, as defense to violation of <u>Labor Code § 132a</u>, and postponing applicant's return to work for "reasonable accommodation hearing" was not business necessity when two physicians indicated applicant was medically able to return to work. Bellflower Unified School Dist. v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 742; 68 Cal. Comp. Cases 55 (Cal. App. 2nd Dist. 2002) [See generally Hanna, Cal. Law of Emp. 1nj. and Workers' Comp. 2d § 10.11[2][b].]

WCAB found that defendant terminated applicant in violation of Labor Code § 132a, when evidence showed that applicant was terminated after notifying defendant of intent to file disability claim and after submitting disability slip issued by treating physician; defendant failed to prove that applicant was terminated for poor job performance, when there was no credible evidence that applicant was performing poorly or that applicant had been counseled regarding poor performance, and evidence showed that applicant was top producing salesman for defendant's business. Beverly Hills Porsche/Audi v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Cornp. LEXIS 4862; 66 Cal. Comp. Cases 259 (Cal. App. 2nd Dist. 2001) [See generally Hanna, Cal. _aw of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

WCAB found that defendant violated <u>Labor Code § 132a</u> by canceling applicant's group health insurance coverage after her industrial injury and reducing her flight attendant seniority, and that defendant did not prove business necessity for its actions. Delta Air Lines, Inc. v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 4906; 66 Cal. Comp. Cases 389 (Cal. App. 2nd Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 4.65[2], 10.11 [1], [2][b].]

WCAB found that defendant violated Labor Code § 132a by refusing to return applicant to work after treating physician's deposition testimony that applicant could return to full duty, despite reliance on physician's earlier report indicating that applicant was a qualified injured worker; WCAB found defendant's assertion that it was bound to follow provisions of union contract before returning applicant to work did not constitute valid business necessity, especially since applicant was not receiving workers' compensation benefits or sick/vacation leave from defendant during time off work. Pacific Coast Producers v. Workers' Compensation Appeals Bd., 2001 Cal. Wrk. Comp. LEXIS 5126; 66 Cal. Comp. Cases 952 (Cal. App. 5th Dist. 2001) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

Discrimination--Labor Code § 132a--Business Necessity Defense--Burden of Proof:

WCAB found that governmental entity allocating finite, non-profit financial resources for general welfare of public will meet "realities of doing business" defense when employer reasonably believes that business realities compelled it to take action it did, and WCAB found that county employer met its burden of proving "business realities" defense and, therefore, did not violate Labor Code § 132a, when there was no evidence that allocation of funds at issue made by elected representative body through formal budget process, in which input was received not only from public at large, but also from unions representing employees, was either unreasonable, not made in good faith, or pretext for unlawful discrimination. Abratte v. Workers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS

230; 68 Cal. Comp. Cases 451 (Cal. App. 2nd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2][b].]

Discrimination--Labor Code § 132a--Business Realities:

WCAB found that defendant failed to establish that its refusal to return applicant to his usual work as truck driver following his 7/18/2001 industrial shoulder injury was justified by realities of doing business, when evidence indicated that applicant's work restriction requiring him to use power steering truck could have been accommodated without unreasonable inconvenience or effort by defendant and that defendant provided same accommodation to other drivers who were working under medically required power steering restrictions. Roadway Express, Inc. v. Workers' Compensation Appeals Bd., 2006 Cal. Wrk. Comp. LEXIS 180; 71 Cal. Ccmp. Cas 864 (Cal. App. 6th Dist. 2006). [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[1], [2][b].]

WCAB found that defendant did not establish "business realities" defense for its failure to return applicant to work after her repeated requests to be reinstated, despite inconsistencies in treating physician's report regarding applicant's ability to perform her job duties, when defendant did not attempt to clarify treating physician's report and did not obtain its own medical evaluation until two years after it denied applicant's requests to return to work. Chevron Procucts Co., PSI v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 425; 70 Cal. Ccmp. Cases 228 (Cal. App. 1st Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

Court of Appeal annulled WCAB decision that had held that defendant discriminated against applicant by dismissing him because of his ability, following industrial injury and consequent medical restrictions, to perform only one of three types of duties of his usual and customary employment as can plant inspector since nothing in collective bargaining agreement prohibited defendant from permanently assigning applicant to perform that one duty he was still able to perform, when Court of Appeal found that, regardless of collective bargaining agreement, defendant had adequately rebutted prima facie showing of employer discrimination by demonstrating sufficient business reasons for requiring can plant inspectors to rotate and be proficient in each of three inspection duties, namely, to ensure competence in each area so that inspectors could work any shift as workload required, and defendant had never permitted can plant inspector to perform exclusively the one duty applicant was still able to perform. Silgan Containers Corp., et al. v. Workers' Compensation Appeals Bd., 2004 Cal. Wrk. Comp. LEXIS 152; 69 Cal. Comp. Cases 473 (Cal. App. 5th Dist. 2004) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2]-[3][a].]

WCAB found that applicant did not prove <u>Labor Code § 132a</u> violation and that defendant sustained burden of establishing business necessity defense, when nothing in record supported applicant's assertion that defendant had modified or alternative work to offer applicant, defense witness testified there were no such positions available and applicant did not successfully impeach this testimony, and defendant fulfilled obligation to applicant by notifying him that there was no modified or alternative employment available and offering vocational rehabilitation. Atkins v. Wcrkers' Compensation Appeals Bd., 2003 Cal. Wrk. Comp. LEXIS 545; 68 Cal. Comp. Cases 1690 (Cal. App. 2nd Dist. 2003) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § 10.11[2].]

WCAB found realities of doing business applied and defendant did not viclate Labor Code § 132a by terminating applicant (jail detention officer) in 1/2000, when parties submitted stipulations with request for award indicating work restrictions in 11/99, employer implemented new policy in late 1999 or early 2000 that only two employees per shift could have restricted duty because of need to have able-bodied personnel to respond to emergencies, applicant's restrictions conflicted with his work duties, and when applicant received his restrictions, defendant already had too many personnel on restricted duty under new policy. Silva v. Workers' Compensation Appeals Bd., 2002 Cal. Wrk. Comp. LEXIS 1272; 67 Cal. Comp. Cases 351 (Cal. App. 2nd Dist. 2002) [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d § § 4.65[2], 10.11[1], [2][b], [3][a].]

Discrimination--Labor Code § 132a--Business Realities Defense:

WCAB held business realities defense to <u>Labor Code § 132a</u> discrimination claim applied, when applicant was off work recovering from surgery for industrial injury, defendant archdiocese in effect terminated applicant by denying her request for additional leave after expiration of four-month leave specified in its policy provisions and indicating her position would be filled "right away," defendant